UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
525 NE Oregon Street
PORTLAND, OREGON 97232-2737

Refer to:
2002/01181

October 11, 2002

Mr. Carl J. Christianson
Project Manager
US Corps of Engineers, Walla Walla District
201 North Third Avenue
Walla Walla, WA 99362-1876

Re: Reinitiation of Endangered Species Act (ESA) Formal Section 7 Consultation and Magnuson-Stevens Act Essential Fish Habitat (EFH) Consultation for East Birch Creek Fish Habitat Restoration Project, Umatilla County, Oregon.

Dear Mr. Christianson:

This letter responds to your September 19, 2002, letter requesting reinitiation of formal ESA section 7 and Magnuson-Stevens EFH consultation for the East Birch Creek Fish Habitat Restoration Project in Umatilla County, Oregon. The Army Corps of Engineers (COE) is proposing additional in-water work to correct the orientation and elevation of instream structures installed during the initial construction phase of this project, and has determined that reinitiation of consultation on this project is necessary.

On July 27, 2001, the National Marine Fisheries Service (NOAA Fisheries) issued a biological opinion (Opinion) (refer to: OSB2001-0026-FEC) for the East Birch Creek Fish Habitat Restoration Project. In this Opinion, NOAA Fisheries considered the potential adverse effects of conducting in-water work associated with this project on Middle Columbia River (MCR) steelhead (*Oncorhynchus mykiss*) and EFH for chinook salmon (*O. tshawytscha*). In-water work was scheduled to be conducted within the Oregon Department of Fish and Wildlife (ODFW) in-water work window for East Birch Creek, which ended on October 31, 2001. Unforseen circumstance prevented completion of the construction activities as soon as expected. The COE, in a letter dated September 18, 2001, requested reinitiation of consultation to request an extension of the in-water period until November 16, 2001.

NOAA Fisheries responded with a letter dated October 9, 2001, granting an extension to the in-water work period until November 16, 2001. NOAA Fisheries also stated in the letter that adverse effects to MCR steelhead or EFH for chinook salmon beyond those considered in the Opinion already issued for this project were not expected. This determination was made for two reasons. First, flows in East Birch Creek during the period for October 1- November 16 were not expected to be considerably higher than flows anticipated during the originally scheduled construction period of September 1 to October 15. For this reason, effects due to

sediment introduction into the stream channel should remain minimal. Secondly, the NOAA Fisheries does not expect adult MCR steelhead to be present in East Birch Creek during October or November. Attached to the COE letter requesting reinitation of consultation was information from the ODFW indicating MCR steelhead do not move into East Birch Creek until high spring flows. These data, from an adult trap on East Birch Creek, indicate that peak steelhead movements occur during April and May, and the first fish moving into the creek to spawn were captured in January. Reinitiation of consultation was concluded with that letter.

In its September 19, 2002, letter, the COE said instream structures associated with this project are not preforming to the Corps expectations. During the 2002 spring peak run-off period, unanticipated erosion and high water levels occurred in the project area. After collecting data and conducting hydraulic modeling, the COE concluded that the improper installation of certain instream structures was responsible for the unanticipated erosion and high water levels. The COE is now proposing to correct the elevation and orientation of the improperly placed structures. This will require in-water work to be carried out during October and November 2002. The letter stated that the inwater work would be accomplished by 2-4 track hoes and would involve repositioning and adjusting the elevation of rock comprising instream structures. On September 30, 2002, the COE stated in a telephone conversation that due to contracting issues, only one track hoe would be used (Carl Christianson, COE, pers. com.) Bank disturbance is expected to be minimal and re-vegetation efforts will only be needed for one limited area.

On September 30, NOAA Fisheries staff contacted the COE to determine the amount of incidental take that had occurred as a result of the previous years construction activities. The incidental take statement (ITS) of the July 27, 2001, Opinion limited the amount of incidental take of MCR steelhead to 20 juveniles. The COE stated that 7 juvenile salmonids (assumed to be MCR steelhead) were killed during de-watering associated with the construction activities (Wendell Greenwall, COE, pers. comm.). The COE also stated that the only observed mortalities of salmonids were caused by de-watering of channels to connect newly-created stream meanders. No mortalities were observed due to other construction activities. However, juvenile MCR steelhead were observed leaving the project area when construction activities began.

The proposed actions described in the COE's September 19, 2002, letter will require additional in-water work beyond what was described during the initial formal ESA and EFH consultation concluding with the issuance of the July 27, 2001, Opinion. Although the proposed actions are additional to those described in the initial consultation, they are very similar and are expected to have similar effects to MCR steelhead. The primary difference is that no new channel construction, de-watering, or meander enhancement will occur. These activities were expected to have the most detrimental effects and did result in some lethal take of MCR steelhead. The newly proposed actions are of a smaller scale, and will require less ground disturbance. Construction activities will require anywhere from a few days to a few weeks of approximately four hours of work time each day to complete. As described above in this letter, adult steelhead are not expected to be in the project area during the proposed construction period (October-

November). Effects due to sedimentation are minimized by scheduling the construction activities during the fall low-flow period.

NOAA Fisheries does expect some short-term negative impacts to rearing juvenile MCR steelhead to result from the construction. These effects are described in the Opinion and include minor sedimentation of downstream substrate and interruption of MCR steelhead daily activities such as sheltering and feeding. Lethal take of MCR steelhead beyond the limits established in the ITS of the July 27, 2001 Opinion is not expected to occur.

For these reasons, the NOAA Fisheries does not expect any additional adverse effects to MCR steelhead or EFH for chinook salmon beyond those already considered in the Opinion. Please note that incidental take coverage of the July 27, 2001 Opinion will not apply to this project unless it is completed according to all other nondiscretionary reasonable and prudent measures and terms and conditions set forth in that Opinion. This letter concludes reinitiation of formal consultation.

Reinitiation of consultation for the East Birch Creek Fish Habitat Restoration Project must occur if: (1) The amount or extent of taking specified in the opinion is exceeded, or is expected to be exceeded; (2) new information reveals effects of the action may affect listed species in a way not previously considered; (3) the action is modified in a way that causes an effect on listed species that was not previously considered; or (4) a new species is listed or critical habitat is designated that may be affected by the action (50 CFR 402.16). To reinitiate consultation, please contact the Habitat Conservation Division (Oregon Habitat Branch) of NOAA Fisheries.

Questions regarding this issue should be directed to Eric Murray of the La Grande Field Office of the Oregon Habitat Branch at 541.975.1835 ext. 222.

Sincerely,

Dave Livermore/for

Michael Tehan
Chief, Oregon Habitat Branch
Habitat Conservation Divsion

cc: Tim Bailey, ODFW
Ben Tice, COE
Mary Headley, COE